IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

NATIONAL LABOR RELATIONS BOARD,
Petitioner-Respondent,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,
Respondent-Appellant.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The decision of the National Labor Relations Board and the opinion of the United States Circuit Court of Appeals for the Second Circuit have not been officially reported.

The opinion of the National Labor Relations Board was rendered on February 22, 1943 and is contained in pages 975 to 1004 of the record.

The opinion of the United States Circuit Court of Appeals for the Second Circuit was handed down on December 15, 1943 and is contained in the record at pages 1021 to 1024.

II.

Jurisdiction.

The jurisdiction of this Court is based upon Judicial Code Section 240 (a) (28 U. S. C. Sec. 347 (a)).

The date of the order for mandate of the United States Circuit Court of Appeals for the Second Circuit to be reviewed is March 3, 1944.

III.

Statement of the Case.

The essential facts of the case are stated in the foregoing petition and in the interests of brevity are not repeated here.

IV.

Specifications of Error.

The United States Circuit Court of Appeals for the Second Circuit erred:

5. In failing to hold that where employees freely choose a labor organization it is not for the National Labor Relations Board to say whether such employees chose wisely or otherwise.

V.

Summary of Argument.

(a) The refusal by the National Labor Relations Board to receive and consider competent and material evidence

in an endeavor to explain how and why the employees came to organize the independent group or commit and disestablish their relationship to the union amounted to a denial of the due process of law clause of the Constitution.

(b) The decision of the Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act, which does not create a minimum time during which the employees' elected representatives may act on their behalf.

1. In failing to hold that the refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by The Century Oxford Manufacturing Corporation amounts to a denial of the due process of law clause of the Constitution.

2. In failing to hold that relaxation relating to admission of evidence before the National Labor Relations Board may be used to free administrative Boards from compulsion of technical rules so that a mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order but in no case limits the well known rules relating to weight, applicability and materiality of evidence.

3. In holding that Congress intended that the freedom to choose a representative carries with it a certain degree of permanence.

4. In holding that the National Labor Relations Board can exercise its discretion as to whether a situation exists which would warrant the exercise of free choice by the employees to discharge its representative and appoint another in its place.

VI.

Argument.

POINT A.

The refusal by the National Labor Relations Board to receive and consider competent and material evidence in an endeavor to explain how and why the employees came to organize the independent group or committee and disestablish their relationship to the union amounted to a denial of the due process of law clause of the Constitution.

The Circuit Court of Appeals in its opinion fails to discuss or mention the contention of The Century Oxford Manufacturing Corporation that the order of the Board was invalid because the Trial Examiner's rulings prevented it from introducing evidence bearing on the main issue involved.

The Century Oxford Manufacturing Corporation attempted to prove that the union lost its majority by neglecting its own charges and that this was not motivated or caused by any unfair labor practices on its part.

The Century Oxford Manufacturing Corporation upon the trial endeavored to prove that a successful strike vote was taken in the second week in December, 1941 and that upon the refusal of the union to sanction such a strike the members withdrew from them and was further prevented from proving that the committee, on December 31, 1941, represented almost all of the members of the union (R. 418 to 421, incl., 425).

Such proof would have shown how and why the employees came to organize the committee.

Such proof was competent and material to the issues before the Board.

Such proof should have been considered by the Board.

The refusal to accept and consider such proof amounted to a denial of the due process of law clause of the Constitution.

The refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it amounts to a denial of the due process laws of the Constitution. Cases standing for that proposition are:

> *Donnelly Garment Co.* v. *National Relations Labor Board* (C. C. A. 8) 123 Fed. (2d) 224;
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> *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033;
>
> *Ohio Bell Telephone Co.* v. *Public Utilities Commsion*, 301 U. S. 292, 304, 305, 57 S. Ct. 724, 81 L. Ed. 1093;
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> *Railroad Commission* v. *Pacific Gas & Electric Co.*, 302 U. S. 388, 393, 58 S. Ct. 334, 82 L. Ed. 319;
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> *Morgan* v. *United States*, 304 U. S. 1, 14, 15, 58 S. Ct. 773, 999, 82 L. Ed. 1129.

That the Board would or might have reached no different conclusion had the rejected evidence been received is entirely beside the point. The fact is that a controversy tried before a Court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered. To that effect see:

> *National Labor Relations Board* v. *Thompson Products, Inc.*, 6 Cir., 97 F. (2d) 13, 15;

Foote Bros. Gear & Mach. Corp. v. *National Labor Relations Board*, 7 Cir., 114 F. (2d) 611, 621.

As appears from the record in the case at bar (R. 991) even the Board recognized the existence of a possible basis for the employees' dissatisfaction of the union and if it had not been for the Examiner's ruling excluding the evidence sought to be introduced by The Century Oxford Manufacturing Corporation the record would have included substantial evidence in support of the defense that the actions of the employees were not influenced by the employer or its agents but rather by lack of cooperation or inertia on the part of the union by which it was represented and dissatisfaction with the said union. The refusal on the part of the Examiner to permit such evidence denied The Century Oxford Manufacturing Corporation of the due process of law guaranteed by the Constitution.

Moreover it was the intent and purpose of Congress, in enacting the provisions of the National Labor Relations Act, that evidence prevailing in Courts of equity and law may be relaxed in connection with the admission of evidence offered in proceedings before the National Labor Relations Board and to free administrative boards from compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order.

> *Consolidated Edison Company of New York* v. *National Labor Relations Board*, 59 Sup. Ct. 206, 305 U. S. 197.

Such relaxation of the technical rules of evidence is followed for the purpose of giving the administrative

board a wider scope in accepting evidence with the view that in arriving at its decision the administrative board would use such evidence as is material and competent in the proceeding. This relaxation, however, was never intended to be used to limit the admission of evidence as was done in the case at bar and such limitation is contrary to the established cases.

National Labor Relations Board v. *Illinois Tool Works*, 119 Fed. (2d) 356.

POINT B.

The decision of the Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act, which does not create a minimum time during which an employees' elected representative may act on their behalf.

The Court in its decision states in substance that the Board has the power to hold employees to their choice for a season and, further, that the question of how long the employees' power to recall an elected representative may be suspended is a matter to be finally determined by the Board.

In the case at bar the union was the elected representative for a period of six weeks. The Court as a matter of law held that the employees committed themselves to the union as their representative for a longer period (R. 1023).

The National Labor Relations Act does not prohibit an effective discharge of such representative by reason of dissatisfaction with the activity or inactivity of such representative union nor is there any limitation in said

Act as to the time that such elected representative union must continue as such. Neither does the Act provide that the Board is the final arbiter as to the length of time during which the said elected representative must continue to act.

No one has been prejudiced by the discharge of the union, particularly where the union had made no contracts on behalf of the employees with the employer and has not bound themselves in any way.

The National Labor Relations Act guarantees to employees freedom of choice in the matter of self-organization in collective bargaining uncontrolled or influenced by any expression or form of order from the Labor Relations Board or the Circuit Court of Appeals and a transfer by employees, of their own volition, to another union must be respected both by the employer and the Labor Relations Board. To that effect see:

> *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board* (C. C. A. 8), 104 Fed. (2d) 49;
> *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 59 S. Ct. 490, 83 L. Ed.

In the case of *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board* (cited *supra*) the Court, at page 55, stated as follows:

> "Having in mind that it is the fundamental policy of the Act to permit employees freely to choose their representatives, it follows that the employees have a right to change their choice, and when that fact has been brought sharply to the attention of the Board, as in this case, it was, we think, the duty of the Board to investigate the claim."

In the matter of *National Labor Relations Board* v. *Standard Oil Co.* (C. C. A. 10), 124 Fed. (2d) 895, the Court at pages 902 and 903 stated as follows:

> "The Act guarantees to the employees the right to self-organization, to form or join a labor organization, and to bargain collectively through representatives of their own choosing. This freedom of choice embraces both local and affiliated organizations and where the employees freely choose a local organization, it is not either for the Board or us to say whether they chose wisely or otherwise.
>
> "Standard employees had the right to form the Association and to join the same immediately after the disestablishment of the Plan."

The interpretation given to the Act by the Circuit Court of Appeals for the Second Circuit appears to be contrary to the Act and contrary to the decisions of the Circuit Court of Appeals for other circuits, such as the Eighth and the Tenth Circuits.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers in order that the constitutional rights of the employer may be protected and that an important question of Federal law may be settled as hereinabove discussed and that to such end a writ of certiorari should be granted and this Court review the decision of the Circuit Court and finally reverse it.

Respectfully submitted,

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